

MICHIGAN DEPARTMENT OF CIVIL SERVICE

DRAFT REGULATION – REV A

Appointing Authority Letter Reference: CS-xxDRAFT	Effective Date: March 18, 2001	Index Reference: Grievances and Appeals	Regulation Number: 8.01
Issuing Bureau: Executive	Rule Reference: Rule 8-1 (Grievances) Rule 8-2 (Greivance Appeals)		Replaces: Reg 2.04 (CS-6835, June 1, 1997)
Subject: GRIEVANCE AND GRIEVANCE APPEAL PROCEDURES			

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1. PURPOSE

This regulation prescribes procedures for an employee (1) to file a grievance with an appointing authority and (2) to appeal a final grievance decision of the appointing authority to the Department of Civil Service.

2. CIVIL SERVICE RULES

The following civil service rules are reprinted here for reference.

Rule 8-1: Grievances

8-1.1 Grievance Authorized

An employee may file a grievance with an appointing authority, as authorized in the civil service rules and regulations.

8-1.2 Time Limits

A grievance must be filed in writing within 14 calendar days after the employee knew of or, in the exercise of reasonable diligence, should have known of the circumstances giving rise to the grievance.

8-1.3 Types of Grievances

(a) Types of grievances permitted. *A grievance must allege that the employee is aggrieved by one or more of the following actions of the appointing authority:*

- (1) Discrimination prohibited by rule 1-8 [Prohibited Discrimination].*
- (2) Reprisal prohibited by rule 2-10 [Whistleblower Protection].*
- (3) Discipline without just cause.*
- (4) Written counseling or a less-than-satisfactory service rating issued without just cause.*
- (5) The abolition or creation of a position for reasons other than administrative efficiency.*
- (6) An arbitrary and capricious lateral job change resulting in substantial harm.*
- (7) An action that substantially harmed the employee and violated (1) article 11, section 5 of the Michigan constitution, (2) a civil service rule or regulation, (3) a departmental work rule, or (4) an enforceable written grievance settlement permitted by the civil service rules or regulations.*
- (8) Any other action for which the civil service rules or regulations specifically permit a grievance to be filed.*

(b) Limitation on grievances.

- (1) Grievance not permitted.** *In addition to any other limitations in the civil service rules and regulations, the following limitations on grievances apply unless the grievant alleges that the action violated rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection].*
 - (A) SES or SEMAS employee without prior status.** *A member of the senior executive service [SES] or the senior executive management assistant service [SEMAS] who is separated from state employment at the expiration of an appointment cannot grieve the separation if*

the employee did not have prior status at the time of appointment to the SES or the SEMAS.

(B) Employee in limited-term position. An employee in a limited-term position whose appointment is terminated at or before the end of the term of appointment due to lack of work or funding cannot grieve the termination.

(2) Management rights. Unless specifically authorized in the civil service rules or regulations, an employee cannot grieve the employer's exercise of any of the rights reserved to management in rule 6-4 [Rights of Employer].

(3) Lateral job change. A grievance regarding a nondisciplinary lateral job change may be grieved only under the provisions of subsection (a)(1), (a)(2), (a)(6), or (a)(7), as appropriate. In addition, a grievance regarding a disciplinary lateral job change may be grieved under the provisions of subsection (a)(3).

(4) Technical appointment complaints. The following complaints cannot be filed as a grievance but must be filed directly with the department of civil service under the technical appointment complaint provisions in rule 8-3 [Technical Complaints]:

(A) Unsuccessful candidate. A complaint by an unsuccessful candidate regarding a technical appointment decision or arising out of the selection, appointment, or certification of a candidate.

(B) Employee whose appointment is revoked. A complaint by an employee whose appointment is revoked in compliance with rule 8-3 [Technical Complaints].

8-1.4 Grievance Decision by Appointing Authority

(a) Grievance review and decision. The appointing authority shall review the grievance and issue a written grievance decision, as provided in the regulations. If the appointing authority fails to answer the grievance within the time permitted in the regulations, the appointing authority is deemed to have denied the grievance.

(b) Appeal of grievance decision. The final grievance decision of the appointing authority is binding unless the grievant files a timely appeal of the decision, as authorized in rule 8-2 [Appeals of Grievance Decisions] and the civil service regulations.

Rule 8-2: Appeals of Grievance Decisions

8-2.1 Appeal of Grievance Decision to Department of Civil Service Authorized

A grievant may appeal a final grievance decision of an appointing authority to the department of civil service, as authorized in the civil service rules and regulations.

8-2.2 Limitation on Grievance Appeals

A grievant is not authorized to file a grievance appeal unless the grievance alleges one or more of the following:

- (a) A tangible adverse employment action resulting from discrimination prohibited in rule 1-8 [Prohibited Discrimination].*
- (b) A tangible adverse employment action resulting from reprisal prohibited by rule 2-10 [Whistleblower Protection].*
- (c) Dismissal, demotion, suspension, reduction in pay, or disciplinary lateral job change without just cause.*
- (d) A tangible adverse employment action caused by the abolition or creation of a position.*
- (e) An arbitrary and capricious lateral job change resulting in substantial harm.*
- (f) Denial of compensation to which the grievant was entitled under the civil service rules and regulations.*
- (g) An unsatisfactory service rating issued without just cause.*
- (h) A less-than-satisfactory overall performance-pay evaluation issued without just cause.*
- (i) An action that substantially harmed the employee and violated (1) article 11, section 5 of the Michigan constitution, (2) a civil service rule or regulation, (3) a departmental work rule, or (4) an enforceable written grievance settlement permitted by the civil service rules or regulations.*
- (j) Any other action for which the civil service rules or regulations specifically permit a grievance appeal to be filed.*

8-2.3 Further Limitations on Grievance Appeals

The following additional limitations apply to a grievance appeal unless the grievant alleges that the action of the appointing authority violated rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection]:

- (a) **Probationary employee.** A probationary employee cannot appeal the final grievance decision of the appointing authority regarding any of the following:
 - (1) A probationary service rating.
 - (2) A decision to extend an employee's probationary term.
 - (3) If the employee did not have status at the time of the probationary appointment, a decision by the appointing authority to dismiss the employee during the probationary period or within 28 calendar days after the end of the probationary period.
- (b) **Reprimand or counseling.** An employee cannot file a grievance appeal regarding a reprimand or counseling.

8-2.4 Civil Service Grievance Appeal Procedures

- (a) **Regulations.** The state personnel director shall issue regulations governing the grievance appeal and arbitration procedures.
- (b) **Referral.** If a grievance appeal is not administratively dismissed under rule 8-4 [Summary Dismissal], a hearing officer or arbitrator shall conduct an expeditious review in accordance with the civil service rules and regulations.
 - (1) **Hearing officer.** Unless the grievant elects arbitration under subsection (b)(2), the grievance appeal is referred to a hearing officer designated or appointed by the state personnel director.
 - (2) **Arbitration alternative.** As an alternative to the referral provided in subsection (b)(1), the grievant may elect to have a grievance appeal heard by an arbitrator.
 - (A) **Cost.** The grievant and the appointing authority shall share the cost of the arbitration equally.
 - (B) **Applicable rules and regulations.** An arbitrator shall decide a grievance appeal under the same civil service rules and regulations that would be applicable if the grievance appeal were heard by a hearing officer, except as otherwise specifically provided in the regulations governing arbitration.

(c) **Decision.** *At the conclusion of the grievance appeal, the adjudicating officer shall issue a written decision setting forth findings of fact, conclusions of law, and remedial orders, if any.*

(1) **Attorney fees and costs prohibited.** *An adjudicating officer cannot award attorney fees, witness fees, costs, or other expenses.*

(2) **No interest on award.** *An adjudicating officer cannot award interest on any monetary award.*

(3) **Limitation on damages for limited-term appointments.** *An adjudicating officer cannot award to a grievant in a limited-term appointment, the senior executive service, or the senior executive management assistant service, any damages for any period after the date of expiration of the grievant's term of appointment.*

8-2.5 Further Appeal to Commission Authorized

A party that appeared and participated in a grievance appeal, including an arbitration, may file a further appeal of the final decision of the adjudicating officer to the civil service commission, as provided in the civil service rules and regulations.

8-2.6 Effective Date of Decision of Adjudicating Officer; Automatic Stay; Exception

(a) **Effective date.** *A grievance appeal decision is final and binding on the parties 29 calendar days after the date the decision is issued, unless either (1) the decision provides for a later effective date or (2) a party files a further appeal to the civil service commission within 28 calendar days after the date the decision is issued. If a party files a timely appeal to the civil service commission within 28 calendar days after the date the decision was issued, the effective date of the decision is automatically stayed pending further order of the employment relations board or civil service commission.*

(b) **Exception; grievant's reinstatement ordered.** *If a final decision of an adjudicating officer orders an appointing authority to reinstate a grievant who had been dismissed for cause, the appointing authority, as a condition of further appeal to the civil service commission, shall either (1) reinstate the grievant or (2) restore the grievant's base pay and medical, dental, and vision group insurance. The appointing authority shall continue the reinstatement or payment of base pay and benefits while the appeal to the commission is pending, as provided in the civil service regulations.*

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3. DEFINITIONS

3.1 Definitions in Rules

Rule 9-1.2 Adjudicating Officer

Adjudicating officer means the state personnel director or other civil service administrative officer, technical review officer, hearing officer, arbitrator, or other officer authorized to make a decision reviewable by the civil service commission.

Rule 9-1.3 Administrative Officer

Administrative officer means the state personnel director or a person authorized by the state personnel director to take administrative action on matters filed with the department of civil service or the civil service commission.

Rule 9-1.4 Agency of Convenience

Agency of convenience means a subdivision within a principal department for which a separate appointing authority has been designated.

Rule 9-1.9 Appointing Authority

Appointing authority means each of the following:

- (a) *A single executive heading a principal department.*
- (b) *A chief executive officer of a principal department headed by a board or commission.*
- (c) *A person designated by either of the preceding as responsible for administering the personnel functions of the department, board, commission, or agency of convenience.*

Rule 9-1.13 Autonomous Entity

Autonomous entity means an executive branch organization or function established by law within a principal department, but specifically directed by law to be a separate independent unit, with the intent that its authority, powers, duties, and responsibilities, including personnel, budgeting, procurement, and management-related functions be exercised free from the direction and supervision of the principal department.

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Rule 9-1.83 Party

Party means any of the following persons or organizations:

(a) Party, in a grievance appeal, means any of the following:

(1) The employee who filed the grievance.

(2) The appointing authority that issued the final grievance decision being appealed.

* * *

Rule 9-1.92 Principal Department

Principal department means one of not more than 20 executive branch departments provided for by article 5, section 2, of the constitution.

3.2 Additional Definitions Used in this Regulation

(a) Evidentiary hearing means a contested quasi-judicial proceeding before a hearing officer in which the parties, after notice, may introduce documentary evidence, examine and cross examine witnesses under oath, and submit arguments.

(b) Good cause means an acceptable excuse for failing to file or take other required action timely. *Good cause* does not include a person's own carelessness, negligence, or inattention to the filing or other requirements.

(c) Member of the household means any person (1) living in the household or (2) whose financial or physical care is the principal responsibility, of the hearing officer or hearing officer's spouse.

(d) Family includes a spouse, child, foster child, parent, foster parent, brother, or sister of the hearing officer or hearing officer's spouse.

(e) Mailed means deposited in a United States Postal Service mail receptacle properly addressed, containing the document to be mailed, and with first-class postage fully prepaid on the envelope.

(f) Postmark means a date stamp placed on a mailed envelope or a receipt issued by the United States Postal Service indicating the date the envelope was mailed or received by the United States Postal Service for

mailing. A postmark does not include a date stamp placed by the sender, such as a postage meter stamp.

(g) ***Special extenuating circumstances*** means a compelling excuse for the failure to file a matter timely that arises out of one of the following:

- (1) An intentionally or fraudulently misleading action by an appointing authority or party that prevented the filing.
- (2) Serious physical or mental incapacity of the person that prevented the filing.
- (3) Extraordinary unforeseen circumstances that were outside the control of the person that prevented the filing.

4 GRIEVANCE PROCEDURES AT DEPARTMENTAL LEVEL

4.1 Steps in the Grievance Procedure

(a) **Departmental Step 1.** The grievant shall file a written grievance on a form prescribed by the Department of Civil Service. The grievance must be filed with the departmental official designated to receive the grievance (the “**Step-1 Official**”).

(1) **Time limit for filing a written grievance.** The grievant must file a signed, written grievance no later than 14 calendar days after the date the grievant became aware of the grievance or, in exercise of reasonable diligence, should have become aware of the grievance. If a grievant does not timely file the written grievance, the grievance is waived.

(2) **Extending deadline to file.** The Step-1 Official may extend the deadline for a grievant to file a written grievance. The extension cannot exceed 28 calendar days.

(3) **Answer at step 1.** Within 14 calendar days after the grievance is filed, the Step-1 Official shall hold an informal conference with the grievant and issue a written answer to the grievance.

(b) **Departmental Step 2.** If the grievant is not satisfied with the written answer of the Step-1 Official, the grievant may appeal the grievance

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decision to step 2. If a grievant does not timely file an appeal to step 2, the grievance is considered closed on the basis of the answer at step 1.

(1) Time limit for filing appeal to step 2.

(A) After step-1 answer. If the Step-1 Official issues a timely answer at step 1, the employee must file a signed, written notice of appeal to the appointing authority or other designated officer (the “**Step-2 Official**”) no later than 14 calendar days after the date of the step-1 answer.

(B) No step-1 answer. If the Step-1 Official does not answer the grievance in writing within 14 calendar days after the grievance is filed, the Step-1 Official is presumed to have denied the grievance. Thereafter, the grievant is authorized to appeal to the Step-2 Official. An appeal to step 2 must be filed within 21 calendar days after the last day for the Step-1 Official to respond.

(C) The Step-2 Official may extend the deadline for a grievant to file a written appeal at step 2. The extension cannot exceed 28 calendar days.

(2) Answer at step 2. Within 28 calendar days after the appeal to step 2 is filed, the Step-2 Official shall hold any conference deemed necessary and issue a written answer to the grievance.

(c) Written appeal to the Department of Civil Service. If the grievant is not satisfied with the answer of the Step-2 Official, the grievant may appeal the decision to the Department of Civil Service as authorized in the civil service rules and regulations. If the grievant does not file a timely appeal to the Department of Civil Service, the grievance is considered closed on the basis of the step-2 answer.

4.2 Filing Timely

A grievance or grievance appeal must be filed with the appropriate Step-1 or Step-2 Official before the end of the period specified in this regulation. In order to be timely, a written grievance or grievance appeal must be received in the office of the appropriate departmental Official before 5:00 p.m. of the last day of the period. A grievance or grievance appeal may be delivered by one of the following methods:

(a) **Delivery.** The document may be delivered in person or by mail or other carrier to the designated office of the appropriate Official.

(1) A grievant filing a document must ensure that the document is received timely in the appropriate Official's office. If a party chooses to have the United States Postal Service (USPS) or a commercial overnight courier deliver a document, it must be sent sufficiently in advance so that the document is received in the office of the appropriate Official before the expiration of the relevant period.

(2) The failure of the USPS or a commercial overnight carrier to deliver a document is not good cause to excuse a late filing unless the filing party has a receipt that is postmarked by the USPS or dated by a commercial overnight carrier showing that the document was mailed or sent sufficiently in advance of the expiration of the period to be received before the expiration of the period.

(b) **Facsimile.** If the appropriate Official has listed a facsimile number for receiving grievances, the document may be delivered by facsimile to that number

(c) **E-mail.** If the appropriate Official has established an e-mail address for receiving grievances, the document may be delivered by e-mail to that address.

4.3 Effect of Late Filing

If a grievant files a grievance (at step 1) or grievance appeal (at step 2) after the established deadline, the departmental Official cannot accept the filing unless the grievant establishes either good cause or special extenuating circumstances that excuse the late filing. If the grievant's reasons fail to establish the required good cause or special extenuating circumstances, the filing is dismissed as untimely.

(a) **Good cause.** A filing that is received up to 28 calendar days late cannot be accepted unless the filing party establishes good cause for the late filing that was not due to the filing party's own negligence.

(b) **Special extenuating circumstances.** A filing that is received more than 28 calendar days but less than 1 year late cannot be accepted unless the

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filing party establishes special extenuating circumstances for the late filing.

(c) Maximum Limit. A filing that is 1 year or more late cannot be accepted.

4.4 Group Grievance

If two or more employees have a common grievance, they may file a single group grievance. An employee cannot be a party to a group grievance unless the employee has personally signed and filed the grievance form. A group grievance may be filed at step 1 only if the same Step-1 Official is responsible for responding to all the grievants. Otherwise, the group grievance must be filed directly at step 2.

4.5 Skipping Step 1

A grievant may file a grievance directly at step 2 if the grievant was dismissed, suspended without pay, demoted, laid off, or otherwise aggrieved by an action taken by management above the level of the Step-1 Official. If a grievance is filed directly at step 2, the step-2 procedures and time frames are applicable. However, the Step-2 Official or a designated official must hold an informal conference with the grievant before issuing the step-2 answer, unless the grievant declines to attend the conference.

5. GRIEVANCE APPEAL PROCEDURES IN DEPARTMENT OF CIVIL SERVICE

5.1 Filing a Grievance Appeal

(a) Authorized. A grievant may appeal the final step-2 grievance decision to the department of civil service. An appeal is filed when it is received by the department of civil service, as provided in Regulation 8.06 [Computing Time and Filing Documents].

(b) Time limit to file an appeal to the Department of Civil Service.

(1) After Step-2 Answer. If the Step-2 Official issued a timely written grievance decision at step 2, the grievant must file an appeal to the

Department of Civil Service no later than 28 calendar days after the date of the step-2 answer.

(2) No Step-2 answer. If the Step-2 Official failed to issue a timely grievance decision at step 2, the Step-2 Official is presumed to have denied the grievance. Thereafter, the grievant is authorized to appeal to the department of civil service. An appeal to the Department of Civil Service must be filed within 6 weeks after the last day for the Step-2 Official to respond.

(3) Extension of time to file. A grievant may request an extension of time within which to file an appeal to the Department of Civil Service. Any request for an extension must be filed in writing *before* the expiration of the required time for filing and a copy of the request must be served on the appointing authority. An administrative officer of the Department of Civil Service may approve an extension of time up to 28 calendar days if the administrative officer finds that the grievant has a reasonable need for the extension and that no other party will be materially prejudiced by the extension.

(c) Contents of the appeal. The appeal must include all of the following:

- (1)** A listing of the grievant's (1) name, (2) employee identification number, (3) employing department or agency, (4) mailing address, (5) telephone number, and (6) e-mail address.
- (2)** If the grievant has an authorized representative, a listing of the authorized representative's (1) name, (2) organization, (3) mailing address, (4) telephone number, (5) fax number, and (6) e-mail address.
- (3)** A copy of the original written grievance and the responses issued by the step-1 and Step-2 Officials.
- (4)** A statement of the reasons why the Step-2 Official's answer is unsatisfactory.
- (5)** A certification that a copy of the grievance appeal has been served on the appointing authority.

5.2 Late Appeal

A grievance appeal that is received later than required by subsection 5.1(b) will not be accepted unless it is accompanied by a written explanation of the reasons for the late filing that establishes either good cause or special extenuating circumstances. If the late filing is not accompanied by a written explanation or if the explanation fails to establish required good cause or special extenuating circumstances, the administrative officer shall dismiss the grievance appeal as untimely.

- (a) **Good cause.** A grievance appeal that is filed up to 28 calendar days late cannot be accepted unless the filing party establishes good cause for the late filing that was not due to the filing party's own negligence.
- (b) **Special extenuating circumstances.** A grievance appeal that is filed more than 28 calendar day but less than 1 year late cannot be accepted unless the filing party establishes special extenuating circumstances for the late filing.
- (c) **Maximum Limit.** A grievance appeal that is filed 1 year or more late cannot be accepted.

5.3 Representation

- (a) **Nonexclusively represented employees.** A nonexclusively represented employee who appears as a party in a civil service grievance appeal proceeding may represent himself or herself or may choose to be represented by one of the following:
 - (1) An employee or agent of a limited-recognition organization.
 - (2) An attorney.
 - (3) Another nonexclusively-represented classified employee.
 - (A) If the representative is an employee of the same principal department or autonomous entity (and agency of convenience, if any) as the grievant, the appointing authority shall release the representative from regularly scheduled work without loss of pay or leave credits to attend the civil service proceeding.

(B) If the representative is an employee of a different principal department, autonomous entity, or agency of convenience than the grievant, the representative may be absent from the workplace to attend the civil service proceeding only if the representative's appointing authority has approved annual or personal leave.

(b) **Exclusively represented employees.** If an exclusively represented employee files a grievance regarding a prohibited subject of bargaining under an exclusive civil service procedure, the employee may represent himself or herself or may choose to be represented by one of the following:

- (1) An employee or agent of the employee's exclusive representative.
- (2) An attorney.
- (3) Another exclusively represented classified employee who is member of the same bargaining unit.

5.4 Administrative Review of Grievance Appeal

A civil service administrative officer will review all grievance appeals filed with the Department of Civil Service.

(a) **Dismissal.** The administrative officer may summarily dismiss a grievance appeal for any of the following reasons:

- (1) **Not authorized.** The grievant is not authorized to file the grievance or grievance appeal.
- (2) **Lack of jurisdiction.** The Department of Civil Service lacks jurisdiction over a necessary party or over the subject matter of the grievance or grievance appeal.
- (3) **Untimeliness.** The grievance or grievance appeal was untimely.
- (4) **Another action pending.** Another civil service action has been initiated between the same parties involving substantially the same grievance or grievance appeal.

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- (5) **Barred by prior claim.** Substantially the same grievance or grievance appeal was adjudicated to conclusion in another action between the same parties.

5.5 Mediation and Conciliation

The administrative officer or the hearing officer may require mediation or conciliation of a grievance appeal.

5.6 Civil Service Grievance Appeal Procedures

If the administrative officer does not summarily dismiss the grievance appeal, the grievance appeal will be assigned to a hearing officer for disposition. The hearing officer shall conduct a fair, impartial, and expeditious review and disposition of the grievance appeal in accord with rules 8-1 and 8-2 and these regulations.

5.7 Limitation on Communications

A hearing officer shall not communicate privately with a party or a party's representative regarding the facts or merits of a pending matter. The hearing officer may communicate separately with a party or a party's representative as may be necessary for scheduling and administrative matters unrelated to the merits or facts of the grievance appeal.

5.8 Disqualification of Hearing Officer

(a) **Who May Raise Issue of Disqualification.** A party or the hearing officer may raise the issue of the disqualification of a hearing officer.

(b) **Grounds for Disqualification.** A hearing officer shall be disqualified when the hearing officer cannot impartially decide a matter. Specific grounds include, but are not limited to, the following:

- (1) The hearing officer is personally biased or prejudiced for or against a party or the representative of a party.
- (2) The hearing officer has been consulted by a party or a representative regarding the pending matter before assignment of the matter.

(3) The hearing officer has been employed by a party or a party's representative in any private matter, including a private arbitration, in the preceding 5 years.

(4) The hearing officer, the hearing officer's spouse, or a member of the family or household of either is any of the following:

(A) A party.

(B) A party's representative.

(C) A person known by the hearing officer to have more than a *de minimis* interest that could be substantially affected by the proceeding.

(c) **Time for filing disqualification motion.** A motion to disqualify must be filed within 14 calendar days after the moving party discovers or, in the exercise of reasonable diligence, should have discovered the ground for disqualification.

(d) **Ruling.**

(1) The challenged hearing officer shall decide the motion.

(2) If the challenged hearing officer denies the motion, the moving party may request in writing that the State Personnel Director exercise superintending control and disqualify the challenged hearing officer.

(3) A request by the moving party must be filed in the Office of the State Personnel Director within 7 calendar days after the date the challenged hearing officer denied the motion.

(4) The State Personnel Director's decision on the motion is final.

(e) **Motion granted.** When a hearing officer is disqualified, an administrative officer shall assign the grievance appeal to another hearing officer.

5.9 Prehearing Conference

The hearing officer may conduct a prehearing conference in person or by telephone to consider any matters that will facilitate the fair and expeditious disposition of the grievance appeal, including, for example, the following:

- (a) The simplification of issues.
- (b) Obtaining stipulations and admissions of fact and of documents to avoid unnecessary proofs.
- (c) The identity of material facts in dispute.
- (d) Scheduling matters.
- (e) Prehearing exchange of documents.

5.10 Submissions to Hearing Officer; Proof of Service

If a party submits any written material to the hearing officer, the party shall also serve a complete copy of the material on every other party at the same time. The submitting party shall certify in writing that every other party has been served with the material and the manner of service.

5.11 Summary Disposition without a Hearing

If there is no genuine issue as to any material fact, the hearing officer may decide the matter without an evidentiary hearing based on the grievance record and the written submissions of the parties, including affidavits.

5.12 Hearing Procedures - General

If there is a genuine issue as to any material fact, the hearing officer shall conduct an evidentiary hearing in a manner consistent with the following procedures.

- (a) **Time for hearing.** The hearing officer shall fix the date, time, and place for each hearing.
- (b) **Postponements.** Except in the case of a serious emergency, a request to postpone a scheduled hearing must be filed at least 14 calendar days before the scheduled hearing. The hearing officer may postpone the hearing for good cause shown at the request of a party.

1 (c) **Absence of a party or representative.** A hearing may proceed in
2 the absence of a party or the representative of the party if the party or
3 representative fails to appear or fails to obtain a postponement. If the
4 grievant or the grievant's representative fails to appear, the hearing
5 officer may dismiss the grievance appeal. If the appointing
6 authority's representative fails to appear, the hearing officer shall
7 require the grievant to submit sufficient evidence as may be required
8 to make an award.

9
10 (d) **Prehearing exchange of documents.** When a hearing is
11 scheduled, a party shall provide to every other party a copy of each
12 document that the party may introduce into evidence in the party's
13 case-in-chief. The copies must be delivered in person to all other
14 parties at least 7 calendar days before the hearing. Alternatively, the
15 copies may be mailed to the other parties by first-class U.S. mail at
16 least 14 calendar days before the hearing. A party is not required to
17 provide an advance copy of any document previously exchanged in
18 the grievance. This section does not prohibit a party from introducing
19 rebuttal evidence.

20
21 (e) **Prehearing exchange of witness lists.**

22
23 (1) **Generally.** When a hearing is scheduled, a party shall provide
24 to every other party a written list of the names and titles of all
25 witnesses the party intends to call to give evidence at the
26 hearing. The list must be delivered in person, by facsimile, or
27 by e-mail to all other parties at least 7 calendar days before the
28 hearing. Alternatively, the list may be mailed to the other
29 parties by first-class U.S. mail at least 14 calendar days before
30 the hearing. A hearing officer may exclude testimony of a
31 witness that was not timely listed if another party is materially
32 disadvantaged by the failure to disclose the witness.

33
34 (2) **Security risk; exception.** If an appointing authority intends to
35 call as a witness any prisoner or other person involuntarily
36 committed to the department's custody, the appointing authority
37 is not required to identify the witness if the department
38 determines that the advance disclosure of the identify of the
39 witness would create an unwarranted security risk.

40
41 (f) **Evidence.** At the hearing, the hearing officer shall provide the
42 parties a reasonable opportunity to present evidence, to examine and
43 cross-examine witnesses, and to present argument. The hearing

officer may swear witnesses, take testimony, receive evidence, including opinion evidence, and take such other actions as may be necessary to consider fairly the claims of the parties. The hearing officer may receive and consider the evidence of witnesses by affidavit, giving it only such weight as seems proper after consideration of any objection made to its admission. The rules of evidence do not apply, but the hearing officer may refuse to take or admit evidence that is repetitive, irrelevant, unreliable, or speculative.

(g) Hearing record. The hearing record shall include the following:

- (1)** The grievance and grievance appeal documents, including the written grievance and the written grievance answers.
- (2)** Documents admitted into evidence by the hearing officer.
- (3)** Sworn testimony of witnesses.
- (4)** Briefs and motions filed by the parties.
- (5)** All written orders and decisions of the hearing officer.

(h) Civil service rules and regulations. The hearing officer may judicially note civil service rules and regulations. Civil service rules and regulations need not be admitted into evidence unless there is a genuine dispute regarding the authenticity or text of the rule or regulation.

(i) Departmental work rules. Departmental work rules must be admitted into evidence.

5.13 Orders of Appearance, Subpoenas, and Discovery

- (a) Authority of adjudicating officer.** In order to obtain relevant and material evidence necessary to decide a matter pending before the department of civil service, a civil service adjudicating officer is authorized to order persons to appear and give testimony or produce any evidence, including books, records, papers, correspondence, or documents in the person's possession or under the person's control.

(b) Orders of Appearance for Classified Employees

1
2 **(1) Requirements.** An adjudicating officer may issue an order to require
3 a classified employee to appear to give testimony or produce
4 evidence on request of a party or on the adjudicating officer's own
5 motion.

6
7 **(A)** Before a party requests an order of appearance, the party must
8 seek the voluntary agreement of the classified employee to
9 appear. The party must affirmatively state in its request for an
10 order of appearance that the party sought the voluntary
11 compliance of the classified employee and the employee
12 refused.

13
14 **(B)** A party requesting an order of appearance must make the
15 request in writing at least 21 calendar days before the
16 scheduled appearance date. The adjudicating officer may issue
17 an order on a late request only if the requesting party
18 demonstrates good cause for the late request.

19
20 **(2) Service of order.** An order of appearance must be served on the
21 classified employee to whom it is directed. If a party requests the
22 order, that party is responsible for serving the order on the classified
23 employee. If the adjudicating officer issues the order on the officer's
24 own motion, the Department of Civil Service is responsible for
25 serving the order.

26
27 **(3) Appearance of classified employees.** All classified employees, as
28 a part of their official duties, shall appear as directed by an
29 adjudicating officer.

30
31 **(A)** An appointing authority shall release the employee from
32 regularly scheduled work without loss of regular pay or leave
33 credits for necessary travel and attendance to comply with the
34 order of the adjudicating officer unless an emergency or critical
35 safety concerns prohibit releasing the employee. The employee
36 is not entitled to overtime pay or travel expenses.

37
38 **(B)** A classified employee ordered to produce evidence in the
39 person's possession or under the person's control shall produce
40 the evidence as ordered by the adjudicating officer unless the
41 employee or the employee's appointing authority files a written
42 objection to the order at least 7 calendar days before the date
43 the documents are to be produced.

(c) Orders to Departments.

(1) Requirements. An adjudicating officer may issue an order of appearance to a principal department, autonomous entity, or agency of convenience to provide testimony or to produce any evidence, including books, records, papers, correspondence, or documents in the possession of or under the control of the department, autonomous entity, or agency of convenience. The order may issue on request of a party or on the adjudicating officer's own motion.

(A) Before a party requests an order of appearance, the party must seek the voluntary agreement of the principal department, autonomous entity, or agency of convenience to appear. The party must affirmatively state in its request for an order of appearance that the party requested the appointing authority of the principal department, autonomous entity, or agency of convenience to voluntarily comply with the request and the appointing authority refused.

(B) A party requesting an order of appearance must make the request in writing at least 21 calendar days before the scheduled appearance date. The adjudicating officer may issue an order on a late request only if the requesting party demonstrates good cause for the late request.

(2) Service of order. An order of appearance must be served on the office of the appointing authority of the principal department, autonomous entity, or agency of convenience to which it is directed. If a party requests the order, that party is responsible for serving the order. If the adjudicating officer issues the order on the officer's own motion, the Department of Civil Service is responsible for serving the order.

(3) Appearance of Principal Department, etc. A principal department, autonomous entity, or agency of convenience shall comply with an order of appearance and provide one or more witnesses or produce the evidence as ordered unless it files an objection to the order at least 7 calendar days before the witness or evidence is to be produced.

(4) Sanctions. If a principal department, autonomous entity, or agency of convenience flagrantly and wantonly refuses to comply with an

order of the adjudicating officer and the requesting party is materially disadvantaged by the refusal, the adjudicating officer may impose appropriate sanctions, up to and including dismissal of any claims or defenses of the offending principal department, autonomous entity, or agency of convenience.

(d) Subpoenas

- (1) Subpoenas authorized.** An adjudicating officer may issue a subpoena to require the attendance and testimony of any person not a classified employee and the production of any evidence not in the possession or control of a party, classified employee, principal department, autonomous entity, or agency of convenience.
- (2) Requirements.** When necessary to obtain relevant and material evidence to resolve a matter, an adjudicating officer, upon the officer's own motion or on the written request of any party, may issue a subpoena requiring the attendance and testimony of any person not a classified employee and the production of any evidence in the person's possession or under the person's control.
- (3) Applications and review.** An application by a party for a subpoena is normally reviewed and acted upon by the hearing officer assigned to the matter. However, in the absence of an assigned hearing officer, another hearing officer or administrative officer may grant or deny the request of a party. When available, the assigned hearing officer may reexamine the decision. A subpoena commands the person to whom it is directed to attend and testify at the civil service proceeding, to produce the things designated, or to give a deposition.
- (4) Service, proof.** A subpoena may be served at any place within the state. The party requesting the subpoena is responsible for service of the subpoena. Service must be made by delivery of a copy to the person served. A subpoena must be served personally by an individual of suitable age and discretion who is not a party to the grievance appeal. Verified proof of service must be filed with the adjudicating officer.
- (5) Notice to other parties.** The party requesting the subpoena shall mail to every other party a copy of the subpoena within 24 hours after service of the subpoena on the person to whom it is directed.

- 1 **(6) Costs.** The cost of service and witness and mileage fees are borne
2 by the party who requested the subpoena. If a subpoena is issued
3 upon motion of the hearing officer, the costs are borne by the
4 Department of Civil Service. Witness and mileage fees are the same
5 as are paid to witnesses in the circuit courts of this state
6
- 7 **(7) Revocation.** Any person served with a subpoena who does not
8 intend to comply with the subpoena shall, within 7 calendar days after
9 the date of service of the subpoena, petition in writing to revoke the
10 subpoena. A petition to revoke is filed with the Department of Civil
11 Service and referred to the adjudicating officer for ruling. The person
12 filing a petition to revoke a subpoena shall serve a copy of the
13 petition on the party who requested the subpoena. Notice of the filing
14 of a petition to revoke must also be promptly given by the
15 Department of Civil Service to the party at whose request the sub-
16 poena was issued. The hearing officer may revoke a subpoena if the
17 evidence required to be produced does not relate to the matter in
18 issue, if the subpoena does not describe the requested evidence with
19 sufficient particularity, or if the subpoena is invalid for any other
20 sufficient reason.
21
- 22 **(8) Testimony not required.** A party at whose request a subpoena was
23 issued is not obligated to call the witness or present the witness for
24 cross-examination.
25
- 26 **(9) Compliance.** If a person served with a subpoena fails to comply with
27 the subpoena, the party on whose behalf it was issued may file a
28 petition in the Michigan circuit court for an order requiring compli-
29 ance. If a circuit court petition is filed, the hearing officer may adjourn
30 the proceedings or take other action deemed appropriate. If the
31 hearing goes forward, the hearing officer may presume that the
32 evidence or testimony of a witness who failed to comply with the
33 subpoena would be adverse to any party who is responsible for the
34 failure or refusal of a witness to testify.
35

36 **(e) Discovery of Medical Information**
37

- 38 **(1)** When a mental or physical condition of a party is in controversy, the
39 hearing officer may order the prehearing discovery of medical
40 information about the condition. Medical information subject to
41 discovery includes, but is not limited to, medical records in the
42 possession and control of a party, physician, hospital, or other
43 custodian, including the Employee Services Program.

(2) A party who has a valid privilege may assert the privilege and prevent discovery of medical information relating to the party's mental or physical condition. A privilege not timely asserted is waived in the proceeding.

(3) Unless the hearing officer orders otherwise, if a party asserts that the medical information is subject to a privilege and the assertion has the effect of preventing discovery of medical information, the party may not thereafter present or introduce any physical, documentary, or testimonial evidence relating to the party's medical history or medical or physical condition.

(f) Employee Services Program

(1) A hearing officer shall not issue any order regarding any professional assessment or counseling services provided by the Employee Services Program unless the employee receiving the services has signed a written release authorizing the disclosure of such information.

(2) If a party refuses to sign a written release and prevents the disclosure of medical information about a mental or physical condition in contention, the party may not thereafter present or introduce any physical, documentary, or testimonial evidence relating to the party's medical history or medical or physical condition.

(3) Employees of the Employee Services Program shall comply with any order of a hearing officer accompanied by a properly authorized release.

5.14 Decision

(a) Final decision. The hearing officer shall issue a written decision setting forth the hearing officer's findings of fact, conclusions of law, and remedial orders, if any. If the decision disposes of the grievance appeal, the decision is final unless a party files a timely claim of appeal or an application for leave to appeal to the Civil Service Commission.

(b) Remand decision. If the hearing officer remands the matter to the departmental level for further proceedings and does not retain jurisdiction, the remand decision is appealable as a final decision. If the hearing

officer remands the matter to the department level and retains jurisdiction, the decision is appealable only as an interlocutory order.

5.15 Limitation on Awards

(a) A hearing officer is prohibited from awarding any of the following:

- (1) Attorney fees.
- (2) Witness fees.
- (3) Costs or other expenses.
- (4) Interest on any monetary award.

(b) If the grievant is in a limited-term appointment, the senior executive service, or the senior executive management assistant service, the hearing officer cannot award damages for any period after the scheduled date of expiration of the grievant's term of appointment.

5.16 Effective Date of Decision of Adjudicating Officer

(a) **Effective Date.** A grievance appeal decision becomes final and binding on the parties 29 calendar days after the date the decision of the adjudicating officer is issued, unless the decision provides for a later effective date.

(b) **Stay of Effective Date.** If a party files a further appeal to the Civil Service Commission within 28 calendar days after the date the decision was issued, the decision is automatically stayed pending further order of the Employment Relations Board or Civil Service Commission.

(c) **Dismissal Grievances.** If a final decision of an adjudicating officer orders an appointing authority to reinstate a grievant who had been dismissed for just cause, the appointing authority, as a condition of further appeal to the Civil Service Commission, must do one of the following:

- (1) **Temporary Reinstatement.** Temporarily reinstate the grievant to (1) a position at the classification and level held when the grievant was dismissed or (2), if the adjudicating officer ordered reinstatement at a

different classification and level, to a position at the classification and level ordered by the adjudicating officer.

(2) Temporary restoration of base pay and benefits. Temporarily restore the grievant's base pay and medical, dental, and vision group insurance, at the level in effect when the grievant was dismissed.

(A) The temporary restoration of base pay and benefits does not reinstate the grievant to employment in the classified service.

(B) During a period of temporary restoration of base pay and benefits, the grievant is not entitled to any leave credit, retirement credit, longevity credit or payment, additional compensation, increases in base pay, severance pay, expense reimbursement, workers' disability compensation, or any other additional compensation or benefit.

(d) If, after appeal to the Civil Service Commission, the decision of the adjudicating officer reinstating the grievant to the classified service is affirmed, the appointing authority shall make the grievant whole for the period of temporary restoration, with credit for the base pay and benefits that were temporarily restored pending appeal, unless the Civil Service Commission or court of competent jurisdiction orders otherwise.

(e) Back pay pending appeal. The appointing authority is not required to pay an award of back pay or benefits until there is a final, nonappealable decision of the Civil Service Commission or a court of competent jurisdiction affirming an award of back pay.

6 ARBITRATION ALTERNATIVE

6.1 Filing Grievance Appeal to Arbitration

A grievant may elect to have a grievance appeal heard by an arbitrator rather than a hearing officer appointed by the department of civil service. A grievant electing arbitration must first file the grievance appeal with the Department of Civil Service in compliance with subsections 5-1, 5-2, and 5-3, of this regulation.

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6.2 Pre-arbitration Conference

If the administrative officer does not summarily dismiss the grievance appeal, the administrative officer shall schedule a pre-arbitration conference of the parties within 28 calendar days after the date the grievance appeal was filed. The parties may explore conciliation, stipulate as to issues and facts, and coordinate selection of the arbitrator. At the conclusion of the conference, the administrative officer shall certify the grievance appeal to arbitration.

6.3 Selection of Arbitrator

Within 14 calendar days after the administrative officer mails the certification, the grievant must file a request with the selecting agency or acknowledge acceptance of a mutually agreed arbitrator. Unless the parties agree otherwise, the arbitrator shall be selected and the hearing conducted under the rules of the American Arbitration Association that are not inconsistent with the civil service rules and regulations. The Federal Mediation and Conciliation Service or Michigan Employment Relations Commission may be used by mutual agreement.

6.4 Conduct of Arbitration

(a) Cost. The grievant and the appointing authority shall share the cost of the arbitration equally.

(b) Applicable law. An arbitrator shall decide a grievance appeal under the same substantive civil service rules and regulations that apply if the grievance appeal were heard by a civil service hearing officer under the provisions of rule 8-2 and this regulation.

(c) Record.

(1) The arbitration must be recorded so that a written verbatim transcript of the arbitration proceedings can be made, if necessary.

(2) The arbitrator must retain all original documents, exhibits, pleadings, orders, and decisions. If a party appeals the arbitrator's final decision, the arbitrator shall provide the original documents, exhibits, pleadings, orders, and decisions to the Employment Relations Board on request of the appellant.

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1 **(d) Decision.** The arbitrator shall issue a written decision setting forth the
2 arbitrator's findings of fact, conclusions of law, and remedial orders, if any.
3 A remedial order of an arbitrator cannot exceed the scope of remedies
4 available to a civil service hearing officer. The decision of the arbitrator is
5 final unless a party files a timely claim of appeal or an application for leave
6 to appeal to the Civil Service Commission.

REGULATION 2.04
GRIEVANCE AND APPEALS PROCEDURE FOR
EMPLOYEES IN THE STATE CIVIL SERVICE
(JUNE 1, 1977)

PART 1: GENERAL PROVISIONS

101 Authorization. — It is authorized by the Civil Service Commission under Rule 2-20 (Appeals) and the Employee Relations Policy Rule 6-9.7.

102 Purpose. — The purpose of the grievance and appeals procedure shall be to provide an orderly system of resolving employee grievances in an equitable and timely manner without fear of reprisal. Every effort shall be made to reach a clear understanding of the exact nature and facts of the grievance and of the relief requested, and to explore sound resolution of the grievance.

103 Representation. — At Step 1 of the Grievance Procedure the grievant may have one fellow employee representative. The grievant may have representation of his or her own choice beginning at Step 2 in the Grievance Procedure, in the Civil Service Bureau Appeals Procedure, in the Employment Relations Board Appeal Procedure, and in Trial Board Procedures. However, civil service rules prohibit an exclusive representative from representing excluded employees.

(a) Fellow employee. — Another employee of the same principal department and the same sub-agency.

(b) Spokesperson. — When more than one representative is present, the grievant shall designate his or her principal spokesperson.

104 Administrative Leave. — Necessary and reasonable absence from work for scheduled grievance adjustment meetings with supervisors, Civil Service Department representatives, and for Civil Service appeal meetings, shall be granted the grievant and one representative without loss of pay or leave credits. Grievant and his or her employee representative where grievant is not represented by an employee organization paid staff representative or attorney, and necessary witnesses timely called by the grievant shall lose no pay or leave credits for necessary travel and attendance at a scheduled Civil Service hearing, but overtime and travel expenses are not authorized.

~~105 Time Limitations.~~ The following time limitations shall be observed:

- ~~(a) Time shall be counted in terms of weekdays, defined as Monday through Friday, excluding State employment holidays.~~
- ~~(b) Grievances shall be presented within ten (10) weekdays of the employee becoming aware of the cause of the grievance. Civil Service Department staff decisions shall be appealable within twenty (20) weekdays of notice to the employee.~~
- ~~(c) Late appeals at any step may be accepted only when there is good cause for delay.~~
- ~~(d) Regardless of belated awareness of the cause of grievance or of good cause for late filing, no grievance shall be filed on events, nor relief be retroactive to events, which occurred more than ninety (90) calendar days before the filing date; however, the Department, Hearing Officer or Arbitrator may accept grievances up to one year after occurrence and grant retroactive relief, if special extenuating circumstances are found.~~
- ~~(e) All appeals to the State Personnel Director, Hearing Officer, and Arbitrator, must be received within fifteen (15) weekdays of the mailing or personal delivery date of the decision at the next lower step.~~
- ~~(f) Any grievance upon which an answer is not made by the Department within the time limits prescribed, or within any written extension agreement, may be appealed to the next step of the grievance and appeals procedure within fifteen (15) weekdays from the date when the Department's time for answer expired. Any unanswered grievance not appealed within this time limit is deemed closed upon the basis of the last answer.~~
- ~~(g) Time limits may be extended by mutual agreement in writing.~~
- ~~(h) All appeals to the Employment Relations Board and Commission must be filed with the Board within twenty (20) weekdays of the mailing date of the decision of the adjudicating officer.~~

~~106 Limitations on Grievances.~~ The following limitations shall be observed:

- ~~(a) Probationary service ratings: there shall be no appeal beyond Step 3 on probationary service ratings of new employees.~~

~~(b) Probationary dismissals: there shall be no appeal beyond Step 3 on dismissals of new employees which occur during or upon completion of the probationary period, unless the employee provides evidence of discrimination prohibited by Rule 1-2. This limitation shall not apply to any continuing employee who has previously achieved full civil service status.~~

~~(c) Counseling: counseling memoranda or reprimands are not appealable beyond the final department step, but service ratings are grievable beyond such step.~~

~~107 Department Trial Boards. Where an employee is required to report on his or her conduct to a trial board, board of inquiry, patient abuse committee, or similar fact-finding board, making any determination prior to imposition of discipline on him or her, he or she shall have the right to appear, to have representation, and to have an opportunity to call witnesses. The employee shall receive a copy of the findings and have an opportunity for posthearing appeal to the appointing authority before imposition of discipline.~~

~~108 Shortened Steps. The following are authorized.~~

~~(a) Adverse action: Dismissal, suspension, demotion, layoff, or any grievable action taken by management at a level higher than that of the immediate supervisor, is initially grievable at the next higher step of the grievance procedure above the official acting. If a dismissal or suspension grievance is filed at Step 3, there shall be a conference with the employee.~~

~~(b) Group grievance: Employees having a common complaint may sign and file one group grievance indicating a maximum of three fellow employee spokespersons and a representative of their choice. The grievance shall be filed at the lowest step of the grievance procedure involving a common supervisor.~~

~~109 Waiver of Steps. Upon application of an employee and a department, or upon a motion made by the State Personnel Director, any step or steps of the Department of Civil Service grievance procedure may be waived to permit accelerated handling.~~

PART 2: GRIEVANCE PROCEDURE

201 Definition.— A grievance is a complaint of violation of personnel law, policy, rules, regulation, procedure, condition of employment, past practice, or agreement, or a dispute over its application and interpretation, or a claim of discipline without just cause.

202 Procedure.— The following steps shall be observed:

(a) Department Step 1: An employee who has a grievable complaint shall orally discuss it with his or her immediate supervisor within ten (10) weekdays of becoming aware of the cause of the complaint.

— The immediate supervisor shall have two (2) weekdays from the date of discussion to orally answer the employee.

(b) Department Step 2: If not satisfied with the Step 1 grievance decision, the employee shall explain his or her grievance in writing on grievance Form CS-G1 over his or her signature and file it with the immediate supervisor within five (5) weekdays of receiving the oral answer.

— The immediate supervisor shall write an answer on the Form CS-G1 and transmit the employee's written grievance to the appropriate Step 2 supervisory official designated by the department, with a copy to the employee.

— Within ten (10) weekdays from date of filing the CS-G1, the Step 2 supervisor shall hold an oral conference with the employee and issue a decision in writing on grievance answer Form CS-G2.

(c) Department Step 3: If not satisfied with the Step 2 grievance decision, the employee shall, within five (5) weekdays of receiving such decision, return his or her copy of Form CS-G2 to the Step 2 supervisor with a signed notice of appeal.

— The Step 2 supervisor shall transmit the grievance answer Form CS-G2 and the employee's written grievance Form CS-G1 to the principal department director, or the designated personal representative, at Step 3. The department director or designated representative shall have twenty (20) weekdays from date of filing at Step 3 to hold any conference deemed necessary, and to issue a decision in writing on grievance answer Form CS-G2.

~~(d) **Civil Service Step 4:** If not satisfied with the Step 3 grievance decision, the employee shall within fifteen (15) weekdays of the mailing date or personal delivery date of such decision file his or her grievance in writing over his or her signature on the Step 3 grievance answer Form CS-G2, together with a copy of the completed Form CS-G1 and the completed Step 2 supervisor's answer Form CS-G2 to: Hearing Officer, Department of Civil Service, Hearings Division, 608 S. Washington, P.O. Box 30002, Lansing, Michigan 48909.~~

~~— The State Personnel Director shall authorize the Director, Hearings Division, and assigned Staff Members as Civil Service Hearing Officers to conduct hearings and decide grievance cases. Hearings shall normally be held within forty (40) weekdays. Prior investigation and pre-hearing conciliation may be made at the discretion of the Hearings Division.~~

~~— The Hearings Division has the authority to administratively deny without a hearing any case which is obviously not grievable, including disputes by employees covered by a collective bargaining contract, disputes which are not within the definition of a grievance, and disputes which are clearly untimely. Appeals from such administrative denials may be taken to the State Personnel Director within fifteen (15) weekdays from the denial. The State Personnel Director will respond within twenty (20) days of receipt of an appeal under this section.~~

~~(e) **Civil Service Step 5:** The award of a Civil Service Hearing Officer may be appealed to the Employment Relations Board and Commission upon a satisfactory written showing of the grounds specified in Rule 2-20.3 and the Board Appeal Procedures (see Part 5).~~

~~**PART 3: GRIEVANCE TO ARBITRATION**~~

~~**301 Employee Alternative.** As an alternative to appeal to a Civil Service Hearing Officer, an employee may elect arbitration of the grievance as defined in 201. Notice of election must be filed in writing with the Department of Civil Service within fifteen (15) weekdays of mailing or personal delivery of the final Department answer. The employee shall assume one half all costs. The employee's Department shall perform all conditions necessary, and share equally in the cost of arbitration.~~

~~(a) Deferral to Arbitration. The Commission adopts a policy of deferring to arbitration of grievances as defined in 201, while expressly retaining jurisdiction:~~

~~(1) should the dispute for some reason not be promptly submitted to arbitration and resolved.~~

~~(2) should the arbitration procedures themselves be unfair, irregular or reach a result which is repugnant to the Policy, Rules or Regulations of the Commission or a statute.~~

~~**302 Pre-Arbitration Conference.** The Arbitration Officer shall investigate the grievance, schedule a pre-arbitration conference of the parties within twenty (20) weekdays to explore conciliation of the grievance, to obtain agreement on the issues and stipulations to be submitted and to coordinate representation of the state in arbitration.~~

~~**303 Arbitrator Selection Procedure.** Within ten (10) weekdays after mailing of the arbitration officer's certification of an issue to arbitration the employee shall file a request with the selecting agency or acknowledge acceptance of a mutually agreed arbitrator. Either party may appeal to arbitration any threshold dispute reported or ruled upon in certification. Unless agreement has already been reached on any preferred method of selection, the arbitrator shall be selected and the hearing conducted under the rules of the American Arbitration Association. The Federal Mediation and Conciliation Service or Michigan Employment Relations Commission may be used by mutual agreement. Liability for retroactive relief shall not accrue further beyond thirty (30) days from the earliest hearing date for which the arbitrator is available and which management accepts.~~

~~**304 Appeal to Employment Relations Board and Commission.** The award of an arbitrator may be appealed to the Board and Commission by application only and upon written showing of the grounds specified in the Commission policy of deferral to arbitration (See Part 5 as well as Civil Service Rule 2-20.3 and Board Appeals Procedure). This policy provides that while expressly retaining jurisdiction of a grievance the Commission will defer to arbitration absent a showing that:~~

~~(a) The dispute for some reason is not promptly submitted to arbitration and resolved.~~

~~(b) The arbitration procedures were unfair or irregular.~~

~~(c) The result is repugnant to the Policy, Rules, or Regulations of the Commission or a statute.~~

~~PART 4: APPEAL PROCEDURE FOR CIVIL SERVICE BUREAU ACTIONS~~

~~401 Redetermination and Appeals Procedure for Other Civil Service Bureau Actions~~

~~(a) **Redetermination.** Other administrative decisions of department staff for which no other appeal process has been designated shall be subject to redetermination by the director of the department bureau responsible for the staff decision. An aggrieved person may file a written request for a redetermination to the appropriate bureau director. The written request may be filed with the director if the party is uncertain of the identity of the appropriate bureau director. The bureau director shall notify any other party interested in the staff decision of the pending redetermination and may obtain additional information necessary or helpful in the redetermination. The bureau director shall redetermine the matter within ninety (90) calendar days after receipt of the request. The bureau director shall give written notice of the redetermination to the aggrieved party.~~

~~(b) **Appeal to director.** A person aggrieved by a redetermination of a bureau director may request that the state personnel director review the redetermination. A person seeking an appeal to the director shall make application for a discretionary director's review in writing to the director either (a) within fourteen (14) calendar days of the date of mailing of the bureau's redetermination or, (b) if no redetermination has been made by the bureau within the 90-day time period established for response in subsection (1), within fourteen (14) calendar days after the expiration of that time period. The director shall review the application and may administratively deny the application for review (a) for lack of merit, (b) for untimeliness, or (c) for lack of a substantial issue of relevance to the state classified service. If the director grants the application, the director may take appropriate action to review and redetermine the decision of the bureau director and may take any action reasonable and necessary to ensure that the department action complies with all applicable law and rules.~~

~~(c) **No further appeal.** A decision of the director shall be final.~~

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~~402 [Reserved]~~

~~PART 5: APPEAL TO EMPLOYMENT RELATIONS BOARD AND CIVIL SERVICE COMMISSION~~

~~501 Appeal As Of Right.— An employee dismissed for cause may appeal as of right to the Board and Commission from a final Civil Service Department adjudication upholding the dismissal.~~

~~502 Leave To Appeal.— An employee, appropriate employer, exclusive representative, state personnel director or citizen may appeal any other decision of an adjudicating officer only upon application and leave granted in the discretion of the Board and Commission in accordance with Board Appeals Procedures.~~

~~503 Filing.— All appeals to the Board and Commission shall be filed in writing with the Board within twenty (20) weekdays of the mailing date of the decision. Appeals shall be addressed: Employment Relations Board, Capitol Commons Center, 400 S. Pine, P.O. Box 30002, Lansing, MI 48909. Copies of Board Appeals Procedures may be obtained from the Board.~~